

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRACY and BARBARA NEIGHBORS;
ARUL MENEZES and LUCRETIA
VANDERWENDE; LAKE SAMMAMISH
4257 LLC, HERBERT and ELYNNE
MOORE; TED and ELAINE DAVIS; REID
and TERESA BROWN; SHAWN and TRINA
HUARTE; ANNETTE MCNABB; EUGENE
and ELIZABETH MOREL; VOLKER ELSTE
and GAIL UREEL,

Plaintiffs,

vs.

KING COUNTY, a home rule charter county,
and THE CITY OF SAMMAMISH, an
Incorporated Municipality

Defendants.

COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
INVERSE CONDEMNATION

COME NOW Plaintiffs Tracy and Barbara Neighbors, Arul Menezes and
Lucretia Vanderwende, Lake Sammamish 4257 LLC, Herbert and Elynne Moore, Ted
and Elaine Davis, Reid and Teresa Brown, Shawn and Trina Huarte, Annette McNabb,
Eugene and Elizabeth Morel, and Volker Elste and Gail Ureel, for their causes of
action against King County and the City of Sammamish and allege as follows:

COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF
AND FOR INVERSE CONDEMNATION

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NATURE OF ACTION

1
2 1. Plaintiffs are landowners who own fee title in land adjoining a 12.45
3 mile length of abandoned railroad right-of-way in King County, Washington between
4 milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County,
5 Washington along Lake Sammamish.

6 2. The railroad, both at the time of the acquisition of the right-of-way in the
7 late 1800s and the abandonment of the right-of-way in 1998, acquired an easement for
8 railroad purposes over and through the adjacent landowners' land.
9

10 3. The railroad line in question was originally constructed by the Seattle,
11 Lake Shore & Eastern Railway Company (SLS&E) from May 1887 through March
12 1888. The SLS&E acquired rights-of-way across public lands under the 1875 Act,
13 easement deeds and prescriptive easements.

14 4. The 1875 Act granted railroad companies rights-of-way over public land
15 to construct tracks and operate railways. Requirements for obtaining a right-of-way
16 were set forth in the 1875 Act, and included filing a map of the intended railroad with
17 the local district land office and receiving approval from the Secretary of the Interior.
18 See 1875 Act, § 4 (codified at 43 U.S.C. § 937 (repealed by the Federal Land Policy
19 and Management Act of 1976, Pub. L. No. 94-579, § 706(a), 90 Stat. 2743)). Pursuant
20 to the 1875 Act, between 1887 and 1891, the SLS&E took the necessary steps to
21 establish a railroad right-of-way across public land along the eastern shore of Lake
22 Sammamish in King County, Washington.
23
24
25

1 5. On July 5, 1887, the SLS&E secured approval from the Department of
2 the Interior of their map identifying the location for proposed construction of a railroad
3 running generally along the eastern shoreline of Lake Sammamish, Washington.
4 Construction of the railroad was completed in 1888. On April 15, 1891, the SLS&E
5 filed a Map of Location showing the final location of the constructed railroad, with the
6 United States Land Office in Seattle, Washington.

7
8 6. On May 13, 1998, the Surface Transportation Board (“STB”) granted
9 Burlington Northern an exemption to abandon a 12.45 mile length of railroad between
10 milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County,
11 Washington. *See id.*

12 7. On September 16, 1998, the STB authorized The Land Conservancy of
13 Seattle and King County (TLC) to assume financial responsibility for the rights-of-way
14 pursuant to the National Trails System Act Amendments of 1983, Pub. L. No. 98-11, §
15 208, 97 Stat. 42, codified at 16 U.S.C. § 1247(d) (2006) (the “Trails Act”). *See*
16 *Burlington N. & Santa Fe Ry. Co. - Abandonment Exemption - in King County., WA*,
17 STB Docket No. AB-6 (Sub. No. 380X), 1998 STB LEXIS 519, 1998 WL 638432.

18
19 8. The STB also authorized the issuance of a Notice of Interim Trail Use
20 (“NITU”) for the Burlington Northern Santa Fe (“BNSF”) right-of-way, permitting
21 King County and the TLC to establish a public recreational trail over the railroad right-
22 of-way. The STB’s ruling authorized conversion of the railroad rights-of-way into a
23 recreational trail, pursuant to 16 U.S.C. § 1247(d). The NITU was issued on September
24 18, 1998.
25

1 9. King County subsequently reached an agreement with BNSF for use of
2 the right-of-way for trail purposes. On September 29, 1998, counsel for the TLC
3 informed the STB that the parties had reached agreements railbanking the railroad
4 corridor pursuant to the NITU. Since the STB approved conversion of the railway to a
5 trail, no railway carriers have used the railroad, and the tracks have been removed from
6 the right-of-way.

7
8 10. King County, by and through The National Trails System Act
9 Amendments of 1983, 16 U.S.C. § 1247(d) (“Trails Act”), and a series of related
10 transactions, contracts, and deeds plan to illegally invade Plaintiffs’ property which
11 adjoins the right-of-way, including Plaintiffs’ surface, subsurface, and aerial rights
12 adjoining the right-of-way.

13 11. Plaintiffs seek, among other things, a declaratory judgment, just
14 compensation and/or injunctive relief, and any actual and statutory damages, attorneys’
15 fees, and costs.

16
17 **THE PARTIES**

18 12. Plaintiffs Tracy and Barbara Neighbors are residents of King County,
19 Washington who own land adjacent to both sides of the former railroad easement
20 acquired by King County in 1998. Tracy and Barbara Neighbors’ parcel number
21 072406-9006, was acquired on June 22, 2011 and includes the fee title, surface, sub-
22 surface, and aerial rights to all that property to the edges of the abandoned right-of-way
23 that is now subject to an easement for an interim trail and possible future railroad
24 reactivation pursuant to the Trails Act.
25

1 13. Plaintiffs Arul Menezes and Lucretia Vanderwende are residents of King
2 County, Washington who own land adjacent to both sides of the former railroad
3 easement acquired by King County in 1998. Arul Menezes and Lucretia
4 Vanderwende's parcel numbers 072406-9024, was acquired on July 22, 1997, and
5 includes the fee title, surface, sub-surface, and aerial rights to all that property to the
6 edges of the abandoned right-of-way that is now subject to an easement for an interim
7 trail and possible future railroad reactivation pursuant to the Trails Act.
8

9 14. Plaintiff Lake Sammamish 4257 LLC is a corporation of King County,
10 Washington that owns land adjacent to one side of the former railroad easement
11 acquired by King County in 1998. Lake Sammamish 4257 LLC's parcel number
12 172406-9079, was acquired on March 20, 2015, and includes the fee title, surface, sub-
13 surface, and aerial rights to all that property to the edge of the abandoned right-of-way
14 that is now subject to an easement for an interim trail and possible future railroad
15 reactivation pursuant to the Trails Act.
16

17 15. Plaintiffs Herbert Carvel Moore and Elynne Moore are residents of King
18 County, Washington who own land adjacent to the former railroad easement acquired
19 by King County in 1998. Herbert Moore and Elynne Moore's parcel number 172406-
20 9077, was acquired on August 27, 2002 and includes the fee title, surface, sub-surface,
21 and aerial rights to all that property to the edge of the abandoned right-of-way that is
22 now subject to an easement for an interim trail and possible future railroad reactivation
23 pursuant to the Trails Act.
24
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1 16. Plaintiffs Ted R. and Elaine M. Davis are residents of King County,
2 Washington who own land adjacent to both sides of the former railroad easement
3 acquired by King County in 1998. Ted R. and Elaine M. Davis's parcel number
4 072406-9020 was acquired on September 21, 1999 and includes the fee title, surface,
5 sub-surface, and aerial rights to all that property to the edges of the abandoned right-of-
6 way that is now subject to an easement for an interim trail and possible future railroad
7 reactivation pursuant to the Trails Act.

8
9 17. Plaintiffs Reid and Teresa Brown are residents of King County,
10 Washington who own land adjacent to both sides of the former railroad easement
11 acquired by the King County in 1998. Reid and Teresa Brown's parcel number
12 072406-9003, was acquired on May 4, 1993 and includes the fee title, surface, sub-
13 surface, and aerial rights to all that property to the edges of the abandoned right-of-way
14 that is now subject to an easement for an interim trail and possible future railroad
15 reactivation pursuant to the Trails Act.

16
17 18. Plaintiffs Shawn and Trina Huarte are residents of King County,
18 Washington who own land adjacent to both sides of the former railroad easement
19 acquired by King County in 1998. Shawn and Trina Huarte's parcel number 072406-
20 9041, was acquired on July 20, 2014 and includes the fee title, surface, sub-surface, and
21 aerial rights to all that property to the edges of the abandoned right-of-way that is now
22 subject to an easement for an interim trail and possible future railroad reactivation
23 pursuant to the Trails Act.
24

1 19. Plaintiff Annette McNabb is a resident of King County, Washington
2 who owns land adjacent to both sides of the former railroad easement acquired by King
3 County in 1998. Annette McNabb's parcel number 072406-9030, was acquired on
4 January 28, 2006 and includes the fee title, surface, sub-surface, and aerial rights to all
5 that property to the edges of the abandoned right-of-way that is now subject to an
6 easement for an interim trail and possible future railroad reactivation pursuant to the
7 Trails Act.

8
9 20. Plaintiffs Eugene and Elizabeth Morel are residents of King County,
10 Washington who own land adjacent to both sides of the former railroad easement
11 acquired by the King County in 1998. Eugene and Elizabeth Morel's parcel numbers
12 072406-9008 and 072406-9090, were acquired on May 27, 1998 and include the fee
13 title, surface, sub-surface, and aerial rights to all that property to the edges of the
14 abandoned right-of-way that is now subject to an easement for an interim trail and
15 possible future railroad reactivation pursuant to the Trails Act.

16
17 21. Plaintiffs Volker Elste and Gail Ureel are residents of King County,
18 Washington who own land adjacent to the former railroad easement acquired by the
19 King County in 1998. Volker Elste and Gail Ureel's parcel number 0724069057 was
20 acquired on April 10, 2013 and includes the fee title, surface, sub-surface, and aerial
21 rights to all that property to the edge of the abandoned right-of-way that is now subject
22 to an easement for an interim trail and possible future railroad reactivation pursuant to
23 the Trails Act.

22. King County is a home rule charter county and a political subdivision of the State of Washington.

23. The City of Sammamish was incorporated under Washington law on August 31, 1999.

JURISDICTION AND VENUE

24. This Court has jurisdiction pursuant to the Revised Code of Washington § 7.28.010 *et seq* and 7.24.101 *et seq*. because the Defendants have clouded the title to Plaintiffs' property, and further pursuant to Article I, Section 16 of the Washington Constitution because Defendants' are attempting to take Plaintiffs' private property without just compensation. Defendant King County obtained an easement for trail use over the surface of Plaintiffs' property by and through implementation of the Trails Act. The width of the easement currently claimed by Defendants is of a greater width than that which was acquired by King County under the Trails Act and therefore is of a width that intrudes upon Plaintiffs' property and their surface, sub-surface, and aerial rights. The underlying action therefore presents a claim arising under the laws of the United States as well as the laws of Washington.

25. Pursuant to the Revised Code of Washington § 4.12.10, venue is proper because (1) Defendants reside in King County; (2) a substantial part of the events or omissions giving rise to the underlying claims occurred in King County, and (3) all of the property that is the subject of this action is situated in King County.

FACTS PERTINENT TO ALL CAUSES FOR RELIEF

26. In the late 1800s, SLS&E acquired land to construct their railroad right-of-way along Lake Sammamish by way of the 1875 Act, easement deeds, and prescriptive easements.

27. In a Trails Act takings case in the Court of Federal Claims, the United States Government stipulated that SLS&E acquired a prescriptive easement in the railroad right-of-way that adjoins Plaintiffs' property. *See Beres v. United States*, 104 Fed. Cl. 408, 415 (Fed. Cl. 2012).

28. The Seattle, Lake Shore & Eastern Railway Company changed names and ownership on several occasions over many decades. After many changes in ownership and acquisition of the line from previous railroads, BNSF became the rail operator. BNSF operated the railroad line over the railroad corridor for a time and ultimately stopped using the right-of-way for the operation of a railroad.

29. The Trails Act authorizes the STB, the governmental entity responsible for regulating railroads and their common carrier obligations, to "preserve for possible future railroad use rights-of-way not currently in service and to allow interim use of the land as recreational trails."

30. Congress enacted the Trails Act to address the national problem of railroad abandonments and the loss of the national network of rights-of-way. The Trails Act authorizes the STB to preserve railroad corridors or rights-of-way not currently in use for train service for possible future rail use by converting those rights-of-way into recreational trails. In essence, the Trails Act allows a railroad to relinquish

1 responsibility for a rail line by transferring the corridor to an entity that will use it as a
2 recreational trail. Although the corridor is not used as a railroad during the period of
3 interim trail use, it remains intact for potential future use for rail service. This process
4 is called “railbanking.”

5 31. Pursuant to the Trails Act, before a railroad corridor may be converted
6 into a recreational trail, the railroad must either initiate abandonment proceedings with
7 the STB under 49 U.S.C. § 10903 or seek an exemption from the ordinary abandonment
8 procedures under 49 U.S.C. § 10502. Under either procedure, abandonment of the rail
9 line and right-of-way will not be approved by the STB if a qualified trail provider
10 submits to the STB a request to use the right-of-way as a recreational trail.

12 32. If the trail provider submits a statement of willingness to assume
13 financial and legal responsibility to the STB and the railroad, the STB will issue a
14 NITU, which preserves the STB’s jurisdiction over the rail corridor while the parties
15 negotiate an Interim Trail Use Agreement. 49 C.F.R. § 1152.29(c).

17 33. The NITU preserves the STB’s jurisdiction over the rail corridor, allows
18 the railroad to discontinue operations and remove track and equipment, and affords the
19 railroad and the trail provider 180 days to negotiate a railbanking and Trails Use
20 Agreement. During this period, the railroad will negotiate an agreement for the transfer
21 of the corridor to the trail operator.

22 34. If an agreement is ultimately reached, the NITU automatically authorizes
23 the interim trail use. If the STB takes no further action, the trail sponsor then may
24 assume management of the right-of-way, subject only to the right of the railroad to
25

1 reassert control of the property for restoration of rail service. If an agreement is not
2 reached, the railroad will be allowed to abandon the line, at which time the STB's
3 jurisdiction over the right-of-way terminates and the fee ownership in the rail corridor
4 returns to the adjacent landowners.

5 35. In 1998, BNSF filed a Petition for Exemption to abandon the line with
6 the STB. On September 16, 1998 the STB authorized the Land Conservancy of Seattle
7 and King County to assume financial responsibility for the corridor and the conversion
8 of the corridor into a recreational trail.
9

10 36. Pursuant to the Trails Act and its implementing regulations, King
11 County entered into an interim Trail Use Agreement with BNSF on September 29, 1998
12 to railbank the railroad corridor from milepost 7.3 near Redmond and milepost 19.75 at
13 Issaquah, in King County, Washington, subject to reactivation for the resumption of
14 interstate freight service. The interim Trail Use Agreement designated King County as
15 the interim trail user for railbanking purposes.
16

17 37. King County, through the Quit Claim Deed from BNSF, and pursuant to
18 the Trails Act, acquired an easement over the surface of the right-of-way, which
19 pursuant to the Trails Act, is now an easement for a recreational trail with the possible
20 reactivation of a railroad.

21 38. Pursuant to Washington law, the width of the prescriptive easement that
22 adjoins Plaintiffs' land and was owned by BNSF is limited to that which was necessary
23 for BNSF to operate its railroad.
24
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39. King County is improperly and illegally attempting to claim ownership of a width of easement which is of a greater width than that which was acquired by King County under the Trails Act, and therefore intrudes upon property and surface, sub-surface, and aerial rights that are owned by Plaintiffs.

40. King County's easement from BNSF, to the extent it purportedly grants any rights over Plaintiffs' land beyond the width that was necessary for BNSF to operate its railroad, is invalid and unenforceable and amounts to a taking of Plaintiffs' property without just compensation.

COUNT I - DECLARATORY JUDGMENT

41. For Count I against King County, Plaintiffs allege as follows:

42. Plaintiffs hereby incorporate by reference paragraphs 1-41 as though fully set forth herein.

43. Plaintiffs own land adjoining the railroad right-of-way adjacent to their property, including surface, subsurface, and aerial rights.

44. BNSF, prior to implementation of the Trails Act and the granting of a quit claim deed to King County, possessed a prescriptive easement for railroad purposes over the land within the railroad right-of-way adjacent to Plaintiffs' property.

45. Pursuant to the Trails Act, BNSF abandoned their prescriptive easement for railroad purposes on the surface of the land within the railroad right-of-way adjacent to Plaintiffs' property, and King County, as trail operator under the Trails Act, acquired a surface easement for a recreational trail with the possible reactivation of a railroad.

1 46. Although King County merely acquired a surface easement for a hiking
2 and biking trail of a width limited to that which is necessary to operate a railroad, it is
3 now claiming rights to a width beyond what it acquired under the Trails Act.

4 47. Under the Uniform Declaratory Judgments Act, Chapter 7.24 of the
5 Revised Code of Washington, the Court has jurisdiction to declare the rights of the
6 parties with respect to the railroad right-of-way at issue. Specifically, under Section
7 7.24.020 of the Revised Code of Washington, any person claiming an interest under a
8 deed, written contract, or statute is entitled to a determination of rights arising under the
9 deed, written contract, or statute.
10

11 48. Plaintiffs are entitled to a declaration of rights that the easement
12 acquired by SLS&E was a prescriptive easement, that the prescriptive easement is of a
13 width limited to that which is necessary to operate a railroad, and that King County has
14 no right to utilize any width of the corridor beyond the width necessary for railroad
15 purposes.
16

17 **COUNT II – INJUNCTION**

18 49. For Count II against King County and the City of Sammamish, Plaintiffs
19 allege as follows:

20 50. Plaintiffs hereby incorporate by reference paragraphs 1-49 as though
21 fully set forth herein.

22 51. Plaintiffs own land adjoining the railroad right-of-way adjacent to their
23 property, including surface, subsurface, and aerial rights.
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1 52. King County alleges to have legal rights to Plaintiffs' land, and King
2 County and the City of Sammamish intend to usurp Plaintiffs' rights in their land,
3 including immediate invasion of Plaintiffs' rights, including the intention to widen a
4 current recreational trail, which King County and the City of Sammamish have no legal
5 right to do.

6 53. King County has applied for a permit from the City of Sammamish in
7 order to allow widening of the recreational trail but the City of Sammamish has no legal
8 right to issue any permit to widen the recreational trail because it will encroach or
9 invade upon Plaintiffs' property.

11 54. King County publically alleges to have rights and publically alleges their
12 intention of widening the recreational trail.

13 55. As is evidenced by public notices issued by the City of Lake
14 Sammamish, the widening of the recreational trail could occur as soon as June 18,
15 2015.

16 56. If King County is allowed to execute its plans to widen the trail,
17 Plaintiffs will suffer irreparable because they own property within the boundaries of
18 King County's planned expansion of the recreational trail.

19 57. If the recreational trail is widened, the harm Plaintiffs will suffer
20 includes, but is not limited to, flooding, the loss of trees, loss of landscaping, loss of
21 parking, ease of access, loss of access by emergency vehicles, and damages as a result
22 of extreme proximity of the recreational trail.
23
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1 58. In this instance, the balance of equities tips in favor of Plaintiffs, who
2 will suffer substantial and irreparable harm to their property, whereas Defendants will
3 have to be satisfied with the current width of the right-of-way, which has been
4 unchanged since it was sold to King County in 1998.

5 59. Because this action concerns a taking and damaging of Plaintiffs'
6 property without the payment of just compensation, the public's interest is served by
7 this injunction since it enforces Article I, § 16 of the Constitution of the State of
8 Washington, which prevents the taking and damaging of private property without the
9 payment of just compensation.
10

11 60. Due to the substantial injury and damage that will be done on Plaintiffs
12 as a result of the permitting process if the recreational trail is widened, this Court
13 should enjoin the City of Sammamish from issuing any permits for widening of the
14 current recreational trail, as well as enjoin King County from continuing any work on
15 the portion of the current recreational trail that adjoins Plaintiffs' property until this
16 Court resolves the issue of the correct width of the former railroad right-of-way that
17 was acquired by King County for recreational trail use.
18

19 **COUNT III – INVERSE CONDEMNATION**

20 61. For Count III against King County and the City of Sammamish,
21 Plaintiffs allege as follows:

22 62. Plaintiffs hereby incorporate by reference paragraphs 1-61 as though
23 fully set forth herein.
24
25

1 63. King County is a home rule charter county and a political subdivision of
2 the State of Washington.

3 64. The City of Sammamish is a home rule charter county and a political
4 subdivision of the State of Washington.

5 65. King County and the City of Sammamish plan to improperly and
6 illegally take and possess a width of right-of-way that intrudes upon property owned by
7 Plaintiffs which is of a greater width than that which was acquired by King County
8 under the Trails Act.
9

10 66. The Defendants' imposition of such width will interfere with Plaintiffs'
11 reasonable use and development of their property.

12 67. The Defendants are government entities that have not instituted formal
13 condemnation proceedings.

14 68. The Defendants are government entities that have not paid Plaintiffs full
15 compensation for Plaintiffs' property, nor ascertained and paid into court compensation
16 for Plaintiffs' property.
17

18 69. The actions of Defendants will cause a cause a taking and/or damaging
19 of Plaintiffs' property interests without just compensation having first been paid, as
20 required by Article I, § 16 of the Washington State Constitution.

21 WHEREFORE, Plaintiffs respectfully request that judgment be entered for
22 Plaintiffs and against King County for a declaratory judgment declaring that King
23 County obtained a recreational trail easement by and through the Trails Act limited to a
24 width that is necessary to operate a railroad, and further that King County and the City
25

1 of Sammamish be enjoined from executing their plans to widen the recreational trail, or
2 pay Plaintiffs just compensation, and for such further monetary and equitable relief and
3 for allowable costs and attorney fees as the Court may deem just and proper.

4 Date: June 16, 2015.

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